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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,325	01/22/2004	Marcel Huard	12296-17US-2 IC/iil	2664

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EXAMINER

PIERCE, WILLIAM M

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 01/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/761,325

Applicant(s)

HUARD ET AL.

Examiner

William M Pierce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 55-79 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 55-79 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the step of the claimed use must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Such subject matter can readily be shown by way of a flow chart

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 55-79 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. These claims fall into a general categories as nonstatutory claims of abstract ideas which constitute "descriptive material." Abstract ideas, *Warmerdam*, 33 F.3d at 1360, 31 USPQ2d at 1759, or the mere manipulation of abstract ideas, *Schrader*, 22 F.3d at 292-93, 30 USPQ2d at 1457-58, are not patentable.

Claims 55-79 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. One cannot

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determine whether a method or apparatus is being claimed. The preamble should positively recite whether the body of the claim to follow is a method or an apparatus

Claim Rejections - 35 USC § 102

For the purposes of this rejection the claims are being treated as apparatus claims.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 55-63 and 66-79 are rejected under 35 U.S.C. 102(b) as being anticipated by Beltran 6,065,752.

As to claims 55-61, 74 and 75 Beltran shows betting cards 104, a bet recorder 202, a random card selector 109 and a payout calculator 208. The functional limitation with respect to what each bet does or represents fails to distinguish over the art of record. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). As to claim 62 and 63, 106 is considered to be a bet securing recorder. The function of the element as recited in the claim fails to distinguish over the applied art as applied above with respect to Schreiber. As to claims 76-78 chips used in the game of Beltran are considered betting markers. As to claim 79 a chip placed on the "0" bet spot is considered to be a outside identifier. As to claim 66, 69-73, the "7" spaces in the middle of the playing surface as shown in fig. 1 is considered to be an outside card. As to claim 68, the awarding of a free turn as an incentive to play a game is considered old and well known. In conclusion, this rejection is largely base on the fact that, in an apparatus claim, the claimed invention must distinguish itself from the prior art in terms of structure rather than function.

Claims 64 and 65 are rejected under 35 U.S.C. 102(b) as being anticipated by Porto, 6,520,503.

102 6,520,503 Porto

As to claim 64, Porto shows a betting numbers display 102, a betting numbers recorder 104, a bet securing numbers recorder 122, random number selector 106 and a payout calculator being the dealer. Claim 65 recites function that fails to distinguish over the applied art. As to claim 54 a players chips in his hand are considered to be a payout bank.

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Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 55-67, 69 and 74-79 are rejected under 35 U.S.C. 102(e) as being anticipated by Allen 2001/0015529.

As to claim 1, 22, 23-26, Allen shows displaying cards from a standard deck (ln. 1 of Abstract, recording a bet ([0019], ln. 9), drawing at random ([0063], ln. 1), calculating a payout from his TABLE 3.

From fig. 1, Allen shows a 4x12 grid of 48 gaming bets as required by claim 2. As to claims 56-61, fig. 1 show bets with respect to ranges, color, parity and suit. As to claims 62 and 63, the "high" and "low" bets are considered to be recording a securing bet. As to claims 66, 67 and 69, the King cards of Allen are considered "outside cards" in which all bets lose when the card is drawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 68 and 70-73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allen in view of Baker. As to claim 68 the addition of a free turn card in card games to add interest to the game would have been obvious to one of ordinary skill in the art. For example see Baker in which the Gold card allows a player to bet again. As to claims 70-73, the choice of cards to allow a wager on and those to identify as "outside cards" are considered an obvious matter of design choice.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Astancha, Jones and Berman show wagering games.


Any inquiry concerning this communication and its merits should be directed to William Pierce at E-mail address bill.pierce@USPTO.gov or at telephone number (571) 272-4414.

For **official fax** communications to be officially entered in the application the fax number is (703) 872-9306.

For **informal fax** communications the fax number is (703) 308-7769.

Any inquiry of a general nature or relating to the **status** of this application or proceeding can also be directed to the receptionist whose telephone number is (703) 308-1148.

Any inquiry concerning the **drawings** should be directed to the Drafting Division whose telephone number is (703) 305-8335.


WILLIAM PIERCE
Patent Examiner